

1 LEVIN LAW GROUP PLC
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8 Attorneys for Dale and Beverly Withrow

9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 In re

12 PG&E CORPORATION,

13 And

14 PACIFIC GAS AND ELECTRIC
15 COMPANY,

16 Debtors.

17 X – Affects Both Debtors

CASE NO. 19-30088-DM

**MOTION PURSUANT TO FED. R. CIV.
PRO. 15 TO AMEND PROOF OF CLAIM
NO 8406**

Date: July 7, 2020

Time: 10:00 a.m.

**Place: 450 Golden Gate Avenue
Courtroom 17**

San Francisco, CA 94102

Judge: Hon. Dennis Montali

Objection Deadline: June 29, 2020

1 Pursuant to Rule 15 of the Federal Rules of Civil Procedure (“Rule 15”), Dale Withrow
2 and Beverly Withrow, individually and as Trustees for the Dale S. Withrow and Beverly R.
3 Withrow Living Trust, move to amend Proof of Claim No 8406, which Dale Withrow filed in pro
4 per, on August 29, 2019. Attached hereto as Exhibit B. The purpose of the amendment, Exhibit
5 A, is to more accurately state the estimated dollar value of the claim which was previously stated
6 to be \$40,000 but, after conferring with counsel, is now estimated to be substantially greater. An
7 amended Proof of Claim is submitted herewith Exhibit A. This Motion is supported by the
8 attached Declarations of Dale and Beverly Withrow. Exhibits C and D.
9

10 **I. FACTS**

11 Dale and Beverly Withrow are husband and wife. They, as Trustees for the Dale S.
12 Withrow and Beverly R. Withrow Living Trust, own real property located at 6097 Vista Knolls
13 Drive, Paradise, California. At the time of the Camp Fire, they were renting the home located on
14 that property, but they had planned to occupy it in the near future. The home with associated
15 landscaping and personal property was destroyed or severely damaged in the fire and the value of
16 the property likely declined substantially as a result of the fire damage to the community. The cost
17 to restore the damaged property may well exceed \$1,000,000. See, Dale Withrow Declaration,
18 Exhibit C and Beverly Withrow Declaration, Exhibit D.
19

20 Dale Withrow, acting in pro per, filed a proof of claim in August 2019. Exhibit B. He did
21 not know the value of his claim or how to calculate it. He also believed he would be able to
22 increase his claim once that information would become available to him. He claimed \$40,000,
23 although he intended to claim the full value of the damage to the real property on his own behalf
24 and that of Beverly. Exhibits C, D. He checked the boxes for damage to property, non-economic
25 damages, and any other damages available under California law. He did not check the economic
26 damages box. See, Exhibits B and C.
27
28

1 The Withrows consulted with undersigned counsel in April 2020. During the course of
2 representation, they were advised that the claim is likely worth in excess of \$1 million. Although
3 they filed a timely insurance claim, their insurer has paid only \$430,000 for the damage to the real
4 property – far less than the cost of restoring the full value of the real property as it was before the
5 fire.
6

7 **II. ARGUMENT**

8 Rule 15(a)(2) F. R. Civ. Pro, provides that “The court should freely grant leave [to amend
9 after pleadings are joined] when justice so requires.” In the Bankruptcy context, the Ninth Circuit
10 has allowed amendment to clarify or correct defects in a formal, or informal proof of claim, even
11 after the bar date so long as the original proof made clear the intent of the creditor to hold the
12 debtor liable so that there is no prejudice to other parties.
13

14 In the absence of prejudice to an opposing party, the bankruptcy courts, as courts of
15 equity, should freely allow amendments to proofs of claim that relate back to the filing
16 date of the informal claim when the purpose is to cure a defect in the claim as filed or to
describe the claim with greater particularity.

17
18 *In re Fish* 456 BR 413 (9th Cir BAP 2011)(Citing *In re Sambo's Restaurants, Inc.*, 754 F.2d 811,
19 816-17 (9th Cir. 1985)).

20 In the present case, all creditors are being paid, so there is no prejudice to other creditors
21 in allowing the Withrows to claim the full value of the claim. The debtor has pledged a fixed
22 amount to pay the claims so there is no prejudice to the debtor. Mr. Withrow did not mis-state
23 the claim as a subterfuge to do an end run around the bar date. Rather, he understated the claim
24 in good faith because he did not know what he could claim or how best to calculated the total
25 loss. He, on behalf of himself, his wife and their living trust, made a claim that clearly alerted
26 anyone reading it that it was his intent to claim the full value of the damage to the property and
27
28

1 all other damages available under California law. Allowing the amendment to clarify the claim
2 is in the interest of justice and leave to so amend should be freely granted.

3 The amended claim should be allowed in the interest of justice.
4

5 **III. CONCLUSION**

6 For the alternative reasons set forth above, Movants respectfully request that this Court
7 enter an Order pursuant to Fed. R. Civ. Pro. 17(a)(3) and/ or Bankruptcy Rule 9006(b)(1) as
8 follows:
9

- 10 1. Granting this Motion;
- 11 2. Directing that the claim amendment at Exhibit A hereto be deemed timely filed as
12 relating back to October 21, 2019;
- 13 3. Or, alternatively, directing that Movants shall have until 30 days from a ruling on
14 this Motion to submit the proof of claim attached as Exhibit A to Prime Clerk.
- 15 4. Granting such other or further relief as the Court deems just and proper.
16

17 DATED: June 8, 2020

LEVIN LAW GROUP PLC

19 By: /s/ Richard H. Levin

20 Richard H. Levin
21 Attorneys for Dale and Beverly Withrow
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25
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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)

In re:
PG&E CORPORATION,
- and -
PACIFIC GAS AND ELECTRIC
COMPANY,
Debtors.

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

Proof of Claim (Fire Claim Related)

Read the instructions before filing this claim form. This form is for tort claimants who have a claim against the Debtors (i.e. PG&E Corporation and Pacific Gas and Electric Company) that arose prior to the Debtors filing for bankruptcy (i.e. prior to January 29, 2019) and that arose from, or relates to, a fire.

Do not use this form for non-fire claims. Non-fire tort claimants should use Form 410.

Do NOT file a fraudulent claim. A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Please type or print in the spaces below. Do NOT use red ink or pencil.

Part 1: Identify the Claim

1. Who is the current creditor?	Dale S. Withrow and Beverly R. Withrow Individually and as Trustees of the Dale S. Withrow and Beverly R. Withrow Living Trust Name of the current creditor (the person or entity to be paid for this claim)	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Are you filing this claim on behalf of your family? A family is a group of two or more people related by birth, marriage, domestic partnership, or adoption and residing together. All such people are considered as members of one family.	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If you checked "Yes", please provide the full name of each family member that you are filing on behalf of: _____ _____ _____ _____	
4. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? Name <u>Levin Law Group PLC</u> Attorney Name (if applicable) <u>Richard Levin</u> Attorney Bar Number (if applicable) <u>32041</u> Street Address <u>2615 Forest Ave, Suit 120</u> City <u>Chico</u> State <u>CA</u> Zip Code <u>93928</u> Phone Number <u>530 353 1679</u> Email Address <u>rlevin62@aol.com</u>	Where should payments to the creditor be sent? (if different) Name _____ Attorney Name (if applicable) _____ Attorney Bar Number (if applicable) _____ Street Address _____ City _____ State _____ Zip Code _____ Phone Number _____ Email Address _____
5. Does this claim amend one already filed?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) <u>8406</u> Filed on <u>08/29/2019</u> MM / DD / YYYY	
6. Do you know if anyone else has filed a proof of claim for this claim?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Who made the earlier filing? <u>Dale Withrow</u>	

Part 2: Give Information About the Claim as of the Date this Claim Form is Filed

7. What fire is the basis of your claim? Check all that apply.	<input checked="" type="checkbox"/> Camp Fire (2018) <input type="checkbox"/> North Bay Fires (2017) <input type="checkbox"/> Ghost Ship Fire (2016) <input type="checkbox"/> Butte Fire (2015) <input type="checkbox"/> Other (please provide date and brief description of fire: _____)
8. What are the loss location(s) where you and/or your family suffered harm? (e.g. home or business address, place of injury, place from which you were evacuated, if different.?)	Location(s): 6097 Vista Knolls Drive, Paradise, CA This amended claim is intended to state the full value of the claim which was understated in the original claim form.
9. How were you and/or your family harmed? Check all that apply	<input checked="" type="checkbox"/> Property Damage (homes, structures, personal property, land, trees, landscaping, and all other property damage) <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Renter <input type="checkbox"/> Occupant <input type="checkbox"/> Other (Please specify): _____ <input type="checkbox"/> Personal Injury <input type="checkbox"/> Wrongful Death (if checked, please provide the name of the deceased) _____ <input checked="" type="checkbox"/> Business Loss/Interruption <input checked="" type="checkbox"/> Lost wages and earning capacity <input type="checkbox"/> Loss of community and essential services <input type="checkbox"/> Agricultural loss <input type="checkbox"/> Other (Please specify): _____
10. What damages are you and/or your family claiming/seeking? Check all that apply	<input checked="" type="checkbox"/> Economic damages (including replacement cost of damaged property, diminution in value, loss of use, lost inventory, lost profits, and other economic damage) <input checked="" type="checkbox"/> Non-economic damages (including loss of society and support, loss of consortium, pain and suffering, emotional distress, annoyance and discomfort, and other non-economic damage) <input checked="" type="checkbox"/> Punitive, exemplary, and statutory damages <input checked="" type="checkbox"/> Attorney's fees and litigation costs <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Any and all other damages recoverable under California law <input type="checkbox"/> Other (Please specify): _____
11. How much is the claim?	<input type="checkbox"/> \$ _____ (optional) <input checked="" type="checkbox"/> Unknown / To be determined at a later date

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 06-08-2020 (mm/dd/yyyy)

/s/ Richard H. Levin

Signature

Print the name of the person who is completing and signing this claim:

Name	<u>Richard Levin</u>		
	First name	Middle name	Last name
Title	<u>Attorney</u>		
Company	<u>Levin Law Group PLC</u>		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	<u>2615 Forest Ave, Suit 120</u>		
	Number	Street	
	<u>Chico</u>	<u>CA</u>	<u>93928</u>
	City	State	ZIP Code
Contact phone	<u>530 353 1679</u>	Email	<u>rlevin62@aol.com</u>

EXHIBIT B

PG&E Fire Claim Form

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)

RECEIVED
AUG 29 2019
PRIME CLERK LLC

In re:
PG&E CORPORATION,
- and -
PACIFIC GAS AND ELECTRIC
COMPANY,
Debtors.

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

Proof of Claim (Fire Claim Related)

Read the instructions before filing this claim form. This form is for tort claimants who have a claim against the Debtors (i.e. PG&E Corporation and Pacific Gas and Electric Company) that arose prior to the Debtors filing for bankruptcy (i.e. prior to January 29, 2019) and that arose from, or relates to, a fire.

Do not use this form for non-fire claims. Non-fire tort claimants should use Form 410.

Do NOT file a fraudulent claim. A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Please type or print in the spaces below. Do NOT use red ink or pencil.

Part 1: Identify the Claim

[] Date Stamped Copy Returned
[] No Self-Addressed Stamped Envelope
[] No Copy Provided

1. Who is the current creditor?	DALE S WITHROW Name of the current creditor (the person or entity to be paid for this claim)	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Are you filing this claim on behalf of your family? <small>A family is a group of two or more people related by birth, marriage, domestic partnership, or adoption and residing together. All such people are considered as members of one family.</small>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes If you checked "Yes", please provide the full name of each family member that you are filing on behalf of: BEVERLY R. WITHROW (WIFE) _____ _____ _____	
4. Where should notices and payments to the creditor be sent? <small>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</small>	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	Name: DALE S WITHROW Attorney Name (if applicable): _____ Attorney Bar Number (if applicable): _____ Street Address: 14480 OAK PLACE City: SARATOGA State: CA Zip Code: 95070 Phone Number: 530-965-1433 Email Address: DALEBEV@SBCGLOBAL.NET	Name: _____ Attorney Name (if applicable): _____ Attorney Bar Number (if applicable): _____ Street Address: _____ City: _____ State: _____ Zip Code: _____ Phone Number: _____ Email Address: _____
5. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on MM / DD / YYYY	
6. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2:**Give Information About the Claim as of the Date this Claim Form is Filed****7. What fire is the basis of your claim?**

Check all that apply.

☒ Camp Fire (2018)☐ North Bay Fires (2017)☐ Ghost Ship Fire (2016)☐ Butte Fire (2015)☐ Other (please provide date and brief description of fire: _____)**8. What are the loss location(s) where you and/or your family suffered harm? (e.g. home or business address, place of injury, place from which you were evacuated, if different?)**

Location(s):

6097 VISTA KNOLLS DRIVE
PARADISE CA**9. How were you and/or your family harmed?**

Check all that apply

☒ Property Damage (homes, structures, personal property, land, trees, landscaping, and all other property damage)☒ Owner ☐ Renter ☐ Occupant ☐ Other (Please specify): _____☐ Personal Injury☐ Wrongful Death (if checked, please provide the name of the deceased)☒ Business Loss/Interruption☒ Lost wages and earning capacity☒ Loss of community and essential services☐ Agricultural loss☐ Other (Please specify): _____**10. What damages are you and/or your family claiming/seeking?**

Check all that apply

☐ Economic damages (including replacement cost of damaged property, diminution in value, loss of use, lost inventory, lost profits, and other economic damage)☒ Non-economic damages (including loss of society and support, loss of consortium, pain and suffering, emotional distress, annoyance and discomfort, and other non-economic damage)☒ Punitive, exemplary, and statutory damages☒ Attorney's fees and litigation costs☐ Interest☒ Any and all other damages recoverable under California law☐ Other (Please specify): _____**11. How much is the claim?**☐ \$ 40,000 (optional)☐ Unknown / To be determined at a later date

Part 3: Sign Below

The person completing this proof of claim must sign and date it.
FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.
18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☒ I am the creditor.
☐ I am the creditor's attorney or authorized agent.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/25/19 (mm/dd/yyyy)

Signature

Print the name of the person who is completing and signing this claim:

Name

DAKE S WITHROW
First name Middle name Last name

Title

Company

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

14480 OAK PLACE
Number Street

SARATOGA CA 95070
City State ZIP Code

Contact phone

530-965-1633

Email

DAKEBEV@SBC

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EXHIBIT C

1 LEVIN LAW GROUP PLC
 2 RICHARD H. LEVIN (SBN 32041),
 3 rlevin@wildfirelossattorney.com
 4 2615 Forest Avenue, Suite 120
 Chico, California 95928
 Telephone: 530-353-1679
 Facsimile: 877-310-0160

5 Attorneys for Cutting Edge Orthopedics, LLC
 6 and Rex Miller
 7

8 **UNITED STATES BANKRUPTCY COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10 In re

CASE NO. 19-30088-DM

11 PG&E CORPORATION,

Ex C– Declaration of Dale Withrow

12 And

13 PACIFIC GAS AND ELECTRIC
 14 COMPANY,

15 Debtors.

16 X – Affects Both Debtors
 17

18 **DECLARATION OF DALE WITHROW**

19 **I, Dale Withrow, declare:**

- 20 1. I am over 21, competent to testify and I have knowledge of the following:
- 21 2. My wife Beverly and I are the trustees under the Dale S. Withrow and Beverly R Withrow
 22 Living Trust.
- 23 3. The Camp Fire burned down the rental home we owned through that trust at 6097 Vista
 24 Knolls Drive in Paradise, California. We retained ownership of the lot on which the home
 25 was situated. Even though the home was occupied by tenants at the time of the fire, my
 26 wife Beverly and I had intended to reoccupy that home at some point in the near future.
- 27 4. Our home was approximately 3000 square feet in size, and although I have been advised
 28 that the cost to rebuild and restore the real property may exceed \$1,000,000.00, the
 insurance company paid us only \$430,000.

LEVIN
 LAW
 GROUP PLC

MOTION TO SUBSTITUTE ZDMAK TOOLS, LLC AS REAL PARTY IN INTEREST

11522125.5

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 of 19

- 1 5. I filed a Proof of Claim on behalf of myself and my wife, Beverly, on August 29, 2019. A
2 copy of that Proof of Claim is attached as Exhibit A to this Declaration. The Proof of Claim
3 was filed In Pro Per, without the assistance of an attorney, and without my having obtained
4 legal advice as to our rights.
- 5 6. While I did check the property damage box in the Proof of Claim (Part 2 Section 9) and the
6 non-economic damages box and the "any and all other damages recoverable under
7 California Law" box in Section 10, I failed to check "Economic Damage" in Section 10,
8 and in Section 11 of Part 2 I also specified that our claim was for \$40,000.
- 9 7. I specified \$40,000 as the amount of our claim because I did not know the actual amount
10 and I assumed that the amount could be increased to reflect a higher number once that
11 information would become available to me.
- 12 8. When I completed proof of claim NO. 8406 in August 2019, it was my intent to claim the
13 full economic value of the damage to the home, trees landscaping and all other property
14 loss we sustained at 6097 Vista Knolls Drive, plus the emotional distress to me and my
15 wife. My failure to check the economic damages box and my \$40,000 estimate were based
16 on my own misunderstanding of the value of the claim and the categories I could claim.
- 17 9. I first learned that my wife and I could have a claim against PG&E far in excess of \$40,000
18 upon conferring with attorney Richard H. Levin in April of this year.

17 I declare under penalty of perjury and pursuant to 28 USC 1746 that the foregoing is true and
18 correct.

18 Executed this 4th day of June, 2020

19 DocuSigned by:

19 Dale Withrow

20 D60CF3358764439...

20 Dale Withrow

EXHIBIT D

1 LEVIN LAW GROUP PLC
2 RICHARD H. LEVIN (SBN 32041),
3 rlevin@wildfirelossattorney.com
4 2615 Forest Avenue, Suite 120
5 Chico, California 95928
6 Telephone: 530-353-1679
7 Facsimile: 877-310-0160

8 Attorneys for Cutting Edge Orthopedics, LLC
9 and Rex Miller

10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 In re
13 PG&E CORPORATION,
14 And
15 PACIFIC GAS AND ELECTRIC
16 COMPANY,
17 Debtors.
18 X – Affects Both Debtors

CASE NO. 19-30088-DM
Ex C– Declaration of Beverly Withrow

19 **DECLARATION OF BEVERLY WITHROW**

20 **I, Beverly Withrow, declare:**

- 21 1. I am over 21, competent to testify and I have knowledge of the following:
22 2. My husband Dale and I are the trustees under the Dale S. Withrow and Beverly R. Withrow
23 Living Trust.
24 3. The Campfire burned down the rental home we owned through that trust at 6097 Vista
25 Knolls Drive in Paradise, California. We retained ownership of the lot on which the home
26 was situated. Even though the home was occupied by tenants at the time of the fire, my
27 husband Dale and I had intended to reoccupy that home at some point in the near future.

- 1 4. Our home was approximately 3000 square feet in size, and although I have been advised
2 that the cost to rebuild and restore the real property may exceed \$1,000,000.00, the
3 insurance company paid us only \$430,000.
- 4 5. My husband Dale filed a Proof of Claim on behalf of our joint interest in the damaged
5 property, on August 29, 2019. A copy of that Proof of Claim is attached as Exhibit A to the
6 Declaration of Dale Withrow. The Proof of Claim was filed In Pro Per, without the
7 assistance of an attorney, and without my having obtained legal advice as to the rights of
8 my husband, Dale and myself.
- 9 6. It was my intent that Dale, as my representative, would claim the full value of all damage
10 to our property at 6097 Vista Knolls Drive as well as out emotional distress at losing the
11 home.
- 12 7. I first learned that Dale and I could have a claim against PG&E far in excess of \$40,000
13 after Dale told me about his conversation with attorney Richard H. Levin in April of this
14 year.

15 I declare under penalty of perjury and pursuant to 28 USC 1746 that the foregoing is true and
16 correct.

17 Executed this 4th day of June, 2020,

18 DocuSigned by:
19 
20 Beverly Withrow
21 D60CF3358764439...